(1)

90-1808

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1990

BERMAN J. WATTS, JR.
Petitioner,

vs.

JOHN O. MARSH, JR., Secretary of the Army; DEPARTMENT OF THE ARMY, Headquarters United States army Aviation Center and Ft. Rucker,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Petitioner Pro Se

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QUESTIONS PRESENTED

I.WHETHER PERMISSION TO PROCEED WITHOUT PAYMENT OF COSTS, FEES AND SECURITY AND FOR APPOINTMENT OF AN ATTORNEY IN ACCORDANCE WITH 42 U. S. C. A. 2000 e-5 (f) (1) WAS DENIED ARBITRARILY AND ON ERRONEOUS GROUNDS WHEN; THE LOWER COURT'S CITATION OF WRITTEN DOCUMENT AS SUPPORT CITED THE EXACT OPPOSITE OF WHAT THE COURT CLAIMED, AND ISSUE WAS LIMITED ONLY TO THOSE AGAINST WHICH COURT OBJECTION WAS ARTICULATED?

II.WHETHER DENIAL OF PERMISSION TO PROCEED WITHOUT PAYMENT OF COSTS, FEES, SECURITY AND FOR APPOINTMENT OF AN ATTORNEY IN ACCORDANCE WITH 42 U. S. C. A. 2000 e (f) (1) WAS AN ABUSE OF DISTRICT COURT DISCRETION WHEN THE LOWER COURT'S CITATION OF WRITTEN DOCUMENT AS JUSTIFICATION STATES THE EXACT OPPOSITE OF WHAT IS CLAIMED AND WHEN OTHER ISSUE IS IGNORED?.

III.WHETHER PENDING EEO DISCRIMINATION CLAIMS CAN BE ARBITRARILY DECLARED THE SAME AS NEW COMPLAINT ARISING FROM SUBSEQUENT EVENT THUS DENYING DUE PROCESS.?

IV. WHETHER AGENCY VIOLATIONS OF FEDERAL RULE OF CIVIL PROCEDURE 11 AS EVIDENTLY ACCEPTED BY THE COURT ARE IN CONFLICT WITH THE UNDERLYING MORALITY OF THE PHILOSOPHY ANIMATING THE CONSTITUTION AND SUCH AGENCY PRACTICE DUE TO BE

INVESTIGATED AND PROHIBITED BY IMPOSED SANCTIONS?

V.WHETHER LIMITATION OF ISSUES TO CONSTRUCTIVE DISCHARGE TO AFFIRM DENIAL OF PERMISSION TO PROCEED WITHOUT PAYMENT OF COST, FEES OR SECURITY IGNORES FACTS OF CASE IN WHICH SUCH ISSUE WAS ONLY ONE OF SEVERAL THUS DENYING DUE PROCESS?

VI.WHETHER CONSTRUCTIVE DISCHARGE NEED INVOLVE A FORMAL SEPARATION OF EMPLOYEE AND EMPLOYER BUT OF THE EMPLOYEE FROM THE DUTIES ORIGINALLY SPECIFIED?

LIST OF PARTIES

United States District Court
Judge

Truman M. Hobbs Jr.

United States of America
Merit Systems Protection Board
MSPB Office of the Special Counsel*
M. Cunningham
David M. Smith
David Allred
John Eldron Wilson
Blaine King
F.H. Mayer
C.H. Jacobus; Former Manager LHX Division of
Directorate of Combat Developments.

C.M. Waldran
C.F. Auman
J.B. Truss
C. Blakely

R. C. Fico
R. Steele
LTC. Sheehy
R. Wagg

Employees and Staff

Directorate of Combat
Developments
Directorate of Engineering and
Housing
Army Aviation Center
Ft. Rucker, Alabama

Army Aviation Center
Ft. Rucker, Alabama

Bell Helicopter Textron a
subsidiary of Textron
Inc. and subsequent employer of
C.H. Jacobus

Individuals and/or Entities
having access to
suggestions made by Appellant
and subsequently
receiving award or implementing
suggestion.

Decision Making/Investigative
Agencies Involved.

Additional Federal District
Court Judges (M. D. Alabama)
involved in related causes but
not directly in this cause:

Myron H. Thompson
Robert E. Varner

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JOHN O. MARSH, JR., Secretary of the Army; DEPARTMENT OF THE ARMY, Headquarters United States army Aviation Center and Ft. Rucker,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The petitioner Berman J. Watts, Jr. respectfully requests that a Writ of Certiorari issue to review the judgement

and opinion of the Eleventh Circuit entered in the above entitled proceeding on June 26.1990.

OPINIONS BELOW

The Eleventh Circuit's opinion has not been reported. A copy of that opinion is set forth in the appendix hereto beginning at page A-1.

The orders of the United States District Court for the Middle District of Alabama (Hobbs, D.J.)is not reported. Copies of such orders are set forth in the appendix hereto beginning at page A-9.

JURISDICTION

Invoking federal jurisdiction pursuant to 42 U.S.C Sec. 2000e. *et seq.* petitioner brought this action on May 1,1989 along with a request for commencement of such action without payment of costs,fees or security in

accordance with 42 U.S.C. 2000e-5 (f) (1) as amended. Successive orders denying such request were made on May 11,1989 and request for reconsideration on July 11,1989.

On appeal, the Eleventh Circuit affirmed the lower court decision on June 26,1990. Petition for rehearing and Suggestion for Rehearing In Banc were timely filed but subsequently denied on September 27,1990.

The jurisdiction of this court to review the lower court is invoked under 28 U.S.C. 1254 (1).

STATUTES INVOLVED

Supreme Court Rule 17 (a) provides that a Writ of Certiorari may be granted:

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter....or has so far departed from the accepted and usual course of judicial proceedings, or so far

sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

42 U.S.C. 2000e-5(f)(1) provides that

...in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without payment of fees, costs, or security.

13A-11-8 (a)1a provides that:

Harrassment-A person commits the crime of harrassment if, with intent to harass, alarm or annoy another person he

a. Strikes, shoves, kicks or otherwise touches a person or subjects him to physical contact; or

b.Directs Abusive or obscene language or makes an obscene gesture towards another person.

c. Harrassment is a class C misdemeanor.

STATEMENT OF THE CASE

Summary

This case arises out of the District Court's (Middle District- Southern Division at Montgomery , Alabama) denial

of request to proceed on a Title VII case against respondent without payment of cost , fees or security and for an attorney in accordance with 42 U.S.C. 2000e 5 (f) 1.

Introduction

The appeal decision implies that petitioner was first fired , then brought a wrongful discharge and discrimination action and only subsequently began the complaint process on the instant case. Yet the issues of the instant case were based on discrimination complaint filed prior to any firing or the staged incident comprising it's justification. Indeed, such issue was pending as EEOC complaints that were illegitimately and repeatedly delayed until incident could be arranged with petitioner isolated among hostile witnesses primed with a false story of his prior alleged

"violence" and including one armed with a lethal weapon. Indeed such incident functioned fortuitously for the Agency as pretext to eliminate petitioner and preclude investigation of complaint issues that were so blatant, base and unjustifiable as to be indefensible.

Moreover, the issue of constructive discharge (whose disallowance is used by the Appeals court to deny the request) was but one of many. Such other issue included but was not limited to; harrassment, declaration of Watts suggestion(s) as secret and award to involved management official,differential exclusion from work area due to unjustified clearance suspension (later reinstated by external higher authority) in that Watts was excluded from work area and assigned hazardous (destructively tailored to his response as to

medication taken) and demeaning tasks while whites without clearance were allowed to work in the supposedly "secure" area, and many other individual issues deliberately avoided by the agency in any court proceeding and not necessary to decision in the prior trial.

It should also be noted that the conviction (M. District, Alabama :Judge Varner) used to establish that Watts "struck" his supervisor and justifying the subsequent discharge was for harrassment AL 13A-11-8 (a)1a, b which does not require striking for conviction but for which mere touch or speech may suffice. For that reason a remand hearing to the MSPB was ordered by the district court in the prior case to determine the facts of such "striking". The Agency is currently seeking to illegitimately avoid

review of that hearing and associated administrative processing in a non-Alabama court because it reveals gross changes of testimony and exaggeration over prior testimony by it's witnesses in federal district court versus that used to subsequently persuade the Administrative law judge.

A. *Background*

1. *Pattern of escalating employment discrimination..*

During Appellant's five year tenure (1982-1987) at Ft, Rucker, two related complaints were filed in the fall of 1983 and a series of complaints were filed on an escalating series of actions from Fall, 1983 to April, 1987.

Petitioner's
Ft. Rucker Equal Employment
Opportunity Complaints.

DATE	SUBJECT/	OUTCOME STATUS
1.1/84 (two comp. combined)	Performance Standards Subjective. Reduced Rating.	Settlement Agreement before EEO Complaints examiner
2.8/85	Performance Stds. Equity. Reprisal	Held in Abeyance pending appeal .
3. 2/86	Reprisal Disc. Many accusations	Held in Abeyance Pending EEO appeal
4. 5/86	Revocation of library privileges. Inequitable performance standards application.	Held in Abeyance for EEO appeal

5. 8/86 Cont.	Clearance Suspension. False Accusations. Reprisal/many	DELAYED by Agcy. EEO Appeal.
6. 10/86	Removal. False Accusations. Reprisal. Defamation, appearance of arrest	EEO Complaint delayed. Assoc. Issues on 11th. Circuit Appeal.
7.7/86	Assignment to Hazardous, demeaning tasks. Discriminatory work assignment based on clearance. Prior stated charges as cause.	EEO Complaint delayed. Still pending. Agency seeking to avoid issues
8.2/87	Prosecute threat if complaint pursued.	On remand from EEO to Agncy.

Strangely such activity functioned against Watts as a minority member whose qualifications would challenge the maintenance of

the local promotion barrier for blacks at the GS-9 Level. Such level is made evident by the lack of any black promotions past that level both prior to and during these events despite normal progression of all such similarly situated whites, including those not from accredited and/or reputable engineering schools past such level and including those at relatively high levels with no engineering degree.

The issues of discrimination and retaliation addressed in the district court trial were not the many issues outlined above but retaliatory and discriminatory discharge only. The issues of the instant complaint's 6 and 7 above were clearly pending when the Agency's second removal action (July,1987) was initiated. One such complaint (6) was pending prior to the

initial removal and the uniquely cited and witnessed event that served as the basis for the second removal.

The formal filing dates have a minimum delay of 15 days from the end of EEO counseling. The length of such informal " complaint counseling" varies and was in these cases prolonged so hat the actual event dates were as much as three months prior to formal filing dates Respectively the formal EEO complaint filing dates are:

6. 8/29/89
7. 7/26/86

B.*Differentiation of Complaint of instant case versus prior case.*

The Instant suit is based on complaints clearly occurring at both different times and involving different events and actions as issue than did the prior suit concerning the firing dated July, 1987 based upon an incident

staged August 25,1986.

Petitioner's initial removal was based on uniquely contrived incident after a series of discriminatory and retaliatory acts. Normal movement of disks in the performance of otherwise impossible tasks was suddenly and uniquely declared "attempted larceny" as was the discovery of library books allegedly found in plaintiff's cubicle that he had already paid for and that he could not possibly have reached in time to meet the library's demand for either payment or return of the books. Law enforcement tailing's by private security forces hired by Ft. Rucker and the dissemination of derogatory information compromising substantive and procedural rights of due process were engaged in with resultant attacks upon petitioner in the

community.

At a removal meeting of a few moment's notice, in a remote area so that only hostile (and armed) witnesses were present, Watts was forced to minimize the possible use of the lethal weapon prior introduced by the "victim's subordinate by trying to gain LTC Jacobus'deliberately withheld attention and in so doing assure he too, was in any line of fire towards Watts. Normal touch and equalavent speech was held to be harrassment..Jacobus prior gestures toward such guard and low speech initiated such action as did the earlier overreaction (alerting) of the armed sargent primed with a false story of Watts' prior "violence". It was this contact that was later characterized as "criminal harrassment" although prosecution was not initiated until the

Agency received notice of petitioner's MSPB appeal. At the answer to the criminal information ,the dropping of such charges was offered in exchange for plaintiff's dropping the appeal and EEOC complaints and calling the initial discharge a "voluntary" resignation. Even the security clearance suspension would be voided since the investigative file had been had not been sent to the final authority. When a copy for such offer was requested in writing the a letter was produced. PX.64 from initial trial, motion made for inclusion in record.

Upon petitioner's refusal of such offer, he was prosecuted and convicted of "harrassment" 18 U.S.C.A. 13;Code of Ala. 13A-11-8 based on the agency limited testimony of the agency witnesses as to his intent when contacting Jacobus.

The MSPB subsequently reduced the multitude of agency charges to "wrongful possession of Government property" (the disks moved without hither-to- needed permission) and ordered reinstatement. Upon reporting for duty plaintiff was again notified of a proposed removal based on conduct unbecoming a federal employee and including every prior charge with the addition of "striking a superior".

MSPB appeal resulted in the removal being sustained with the MSPB relying on the conviction for "Harrassment" as proof of plaintiff's "striking" LTC (Ret.) Jacobus and conduct unbecoming a Federal Employee.

The prior suit was a district court review of the MSPB administrative appeal in accordance with 5 U.S.C.A. 7702, 7703, with the

associated discrimination claims being governed by 42 U.S.C.A. 2000e. (R-2-13,pp.1 of memorandum opinion)(pp. 10 transcript,second motion to amend the record on appeal).The associated discrimination claims are necessarily related directly to the involved decision being reviewed and the action that was it's basis. Those claims were that the reviewed actions of suspension and removal were discriminatory and retaliatory.

Petitioner's subsequent appeal of the failure to find the prior actions as discriminatory/retaliatory suspension and discharge was to the Eleventh Circuit.(Appeal No. 88-7511). That court found the appeal premature because the district court decision was not yet final and indicated at such time as such decision became final(a remand for

an administrative hearing had been ordered by the district court) appeal of all issues could properly be raised.

It should also be noted that LTC. Jacobus,upon retirement from his stint as Chief of the LHX Division at the Directorate of Combat Developments (immediately after the alleged incident) went to work for Bell Helicopter Textron of Ft. Worth, Texas, a bidder on the LHX that DCD had prepared design criteria for. The conviction was based largely on this individual's testimony as victim.

The agency actions also have the effect of a continuing nature and permanent effect. Continuation of accusation and blacklisting via unfounded "legal" investigation initiated during these actions and continued,

preclude continuing subsequent employment and enable the detection of any such employment for destructive action in addition to destroying petitioner's privacy. Such effort applies not only to efforts to gain professional employment but even casual labor.

C..*Instant Complaint Basis*.

Appellant filed internal complaints ,United States Army Aviation Center No.'s 864029 and 860431.The Agency repeatedly delayed administrative processing of such complaint by illegitimately refusing to accept complaint issue and on other various pretexts as shown in the following Administrative Procedures section. During such delay the Agency initiated a removal action, later modified to a suspension by the MSPB. The Agency then initiated another removal

based on staged incident in a remote area while attempting to limit witnesses to management and lackeys while threatening Watts safety with the atypical presence of an armed (45 Colt Auto) guard.

The Agency did not initiate prosecution on such charge until MSPB Appeal of the Initial removal was made. Then, influencing the U.S. Attorney to drop such charge was offered in exchange for Appellant's voluntary and retroactive resignation and dropping of Appeal and EEO complaints. Upon refusing such offer Appellant was uniquely prosecuted in the same lower court here involved and convicted based upon the testimony of the aforesaid witnesses as to Appellant's unstated but somehow perceived intent in his prior attempt to gain Jacobus' attention by touch when that individual

signaled to the armed individual who accompanied him to the meeting in what appeared to be a pre-arranged manner. Moreover, the alleged utterance of the word "justice" was held to be proof of abusive or obscene language and the allegation that Watts' fist was clenched as he avoided , Jacobus standing in the road way as he drove out of the only exit from the area (evidently steering and shifting gears with his knees), was held to be an obscene gesture. Representing such conviction for Harrassment (Ala. Law against striking or touching another with the intention to harass, alarm or annoy) as striking a superior in the sense of an assault (where an assault statute was available) as conduct unbecoming a Federal Employee, the Agency initiated a Second removal Action. At such time the original

complaints and other's all made prior to any such climactic incidents and resultant suspension/removals were still in administrative process due to the repeated delaying actions of the Agency.

MSPB Appeal of such removal was again made and subsequently a suit in the lower court here involved was initiated.MD Ala.87-T-804-S,Eleventh Circuit Appeal 88-7511. The complaints that are the basis for this present action were still pending administrative processing due to the Agency's delaying tactics at the time such prior suit was initiated.

Such prior suit was limited to issue of retaliatory/discriminatory discharge only.

D. *Present Suit Issues.*

The present suit involves several other issues of discrimination and

retaliation; Differential treatment with respect to whites with a similar clearance classification; Dissimilar treatment and other false and derogatory accusation preventing advancement and employment elsewhere; Misevaluation of certain suggestions then known not to be practised at the facility and made during employment including but not limited to:

1. The use of current Combinatorial Algorithms to optimize networks as in abstract planning tools such as; PERT and Gnatt charts, logistics and distribution plans and concrete networks such as communication/control /command systems.

2.Means to remotely inhibit internal combustion engines,

3. Means to derange so called "inertial" guidance systems ,

4.Creation of a Local Area Network to share computer facilities and databases (1982); Declaration of certain other suggestion made to correct observed holes in the security system as secret and award for suggestion to white management official; Constructive discharge and the permanent effects of such actions.R2. Such issue of the current action included assignment to work under prohibited conditions of heat stress only after determining medication that elevated blood pressure was being taken. (Jacobus) Such actions included uniquely isolating appellant on a live fire artillery range and initiating baseless rumor (preserved in prior record that Watts had written a note stating that " White women need to raped by black men" when such note had neither the words rape , woman, man,

black or white but concerned a passing thought on altering the probability of fission via unconventional means.) as cause for security tailings and investigation so overt that harrassment rather than professionalism was evident.

During the delay generated by the Agency actions,other harrassment occurred in Appellant's pursuit of a prior case, then pending. For example, the date of the alleged "striking" incident was the same date that the Appellate reply brief was due in Appeals court on a prior case.Eleventh Circuit Appeal 86-7177. (Ft. Rucker's then Counsel, D. Smith, now Chief of litigation Branch for the Army's Civilian Personnel Office, had approved an FOIA request for that respondent to receive copies of Watts'

EEO complaint's in violation of the Privacy act.) Other "spontaneous" event's that affected employment and whose timing could be expected to negatively affect the pursuit of the prior case included virtually all of the actions taken against Appellant since the overt accusation and direct attempts to affect livelihood and performance all occurred after the filing date of such suit. Moreover, Appellant avoided collision from the rapid insertion of a Tractor trailer on a Daleville main street (By an Opp Alabama Gasoline wholesaler tanker truck) across the path of his car immediately before scheduled initial deposition takings (Evidenced by Daleville Police Report , A letter to the Daleville Police Chief and a small claims court case in Dale county) It should be noted that the

"accidental" death rate for non-whites in thea bedroom county of Ft. Rucker (Coffee) is three times the white rate according to the state publication "Alabama's Vital Events for 1986".) A request to the State motor vehicle department for further accident breakdowns by race and possibly by involvement in EEO Complaint or Civil Rights activity went unanswered.

Other "spontaneous" events included sudden eviction just prior to the next depositions preceded by repeated incursions into living quarters without permission or notice. Accosting by whites (never less than three and generally in the dark,but including a threesome who were witnessed by elements of the AME church congregation one sunday morning) making necessary a letter to local black police official and Civil Rights

Organization.

Complaint on such job related portions of such activity were held up pending ORA's decision and past the civil trial that was on retaliatory/discriminatory discharge

E. *Administrative Procedure*

On October 2, 1986 and October 15,1986 Berman J. Watts Jr. filed formal complaints' United States Army Aviation Center (hereafter USAAVNC) at Ft. Rucker number: 864029 Agency (Dept. of the Army) number 86-12-0027 and USAAVNC number 864031 ; Agency number 86-12-0030, respectively of discrimination on the basis of race (Negro) and color, and reprisal in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. . Initial contact with an EEO counselor was , in the

case of Complaint No. 864029 , prior to August 22, 1986 but was delayed by Agency "queries" and refusal to accept legitimate complaint issues. Complaint No. 864031 was preceded by a counselor contact on September 5,1986. Appeal to Agency and the Equal Employment Opportunity Commission's Office Of Review and Appeals (hereafter ORA) of the Notice of Final Interview's letter failure to include all issues of complaint were initiated on October 7,1986 and again when such act was repeated with an amended "Notice of Final Interview Letter" from Ft. Rucker's EEO Officer on October 15,1986. Notice of Acceptance of the Discrimination Complaint by the Ft. Rucker EEO Officer again sought to limit complaint issues necessitating Appeal to the Agency and EEO ORA.

On January 14,1987 Ft. Rucker's EEO Officer requested the United States Army Civilian Appellate Review Agency (hereafter USACARA) hold investigation of the complaints in abeyance. On January 29,1987 Ft. Rucker's EEO officer cancelled the involved complaints. Timely appeal of such decision to the Agency and ORA was again made.

On September 29,1987 (via one of three letters on overlapping and related issues) the Agency notified plaintiff of Appeal rights to the MSPB for the involved complaints. Such communication arrived immediately after the date of an MSPB hearing and record closure of October 13,1987. The MSPB Administrative Judge therefore refused to include such discrimination complaints. Appeal of complaint cancellation was

timely filed on October 16,1987 with EEO ORA. The Agency decision improperly refusing to accept complaint issues in the subject complaints was vacated by ORA and the complaints remanded for further processing on July 18,1989 and August 9, 1988. The Agency timely requested reopening of Appeal No. 01882214 (Agency No. 86-12-0027;USAAVNC No. 864029) on August 12,1988. The Agency untimely requested reopening of ORA Appeal decision 01882213 (Agency No.86-12-0030;USAAVNC No.864031). The Commission (ORA) granted such requests for reopening and consolidated the requests. The Equal Employment Opportunity Commission Office of review and Appeals then concurred with the Agency requests dismissing the complaints on erroneous grounds of mootness due to Watts subsequent removal(s) despite issue

of failure to promote and other permanent effects pending prior to discharge and fact that discharge challenge was still in process.ORA did specifically state that the issues of the administrative complaint were different than those in the prior suit. On the same date the EEOC further issued a Right to Sue letter, a true and correct copy of which is at R1-1 pp. 9.

F..*Lower Court Proceedings and Disposition*.

Petitioner filed a civil suit along with a request for appointment of an Attorney and a request for authorization for commencement of the action without payment of fees, costs, or security in accordance with 42 U.S.C. 2000e-5(f)(1). R1-2,3. Such suit and request were received by the Clerk's Office on April 21,1989 but a standard

form motion for proceeding in forma pauperis (R1-1) was sent to Appellant with instructions indicating that such form and attached affidavit were required rather than the original request and affidavit.R1-3. The Court's response to such submission was an order denying the motion to proceed in forma pauperis and for appointment of an Attorney because "as it appears on the face of plaintiff's complaint that the issues presented and the factual background therefor already have been presented to a court in Watts v. Marsh. No. 87-T-804-S (M.D. Ala. Jul 20,1988)".R1-4

Watts filed a motion for reconsideration of the initial request citing the fact that the issues and associated "factual background" of the present complaint were not and could

not be identical to those of the prior case. R1-5 . The lower court then ordered production of additional information and documents including those portions of the Equal Employment Opportunity Commission Office of Review and Appeals letter besides the right-to-sue. Such order further informed appellant of such court's opinion of constructive discharge and demanded the identity of any specific action that were a part of the prior suit.R1-6.

Petitioner provided the entire EEO ORA letter and the information requested where it existed. Constructive Discharge based on Eleventh and Fifth circuit precedent differed from the lower court's assertion. Identical issues or "factual background thereof" in both prior and present complaint did not exist. R1-7. The district court again denied the

request for reconsideration, stating as reason " that the Commission (in it's right-to-sue letter) came to the same conclusion as the court, that is the issues presented in plaintiff's present complaint have already been adjudicated in a federal district court". R1-8.

Appellant again filed a request for reconsideration, citing the fact that the EEO ORA right-to- sue letter reached the opposite conclusion and specifically stated that the issues in the complaints upon which the present suit is based and the prior suit are different. Other fact indicative of the non-identity of the involved issues and the impossibility of the consideration of complaints that were still in administrative process during the preceding suit. Such prior suit involved issues based on actions "

spontaneously" occurring during the delay generated by the Agency's repeated illegitimate actions in regards to administratively processing the original complaints that are only now reaching the judicial stage.R1-9.

Such request was denied without explanation.

Notice of Appeal to the Eleventh circuit was filed. R1-10.

The Eleventh Circuit affirmed the denial citing as reason opinion that a constructive discharge was not involved because the reason for the latter discharge was other claimed cause. Appendix A-1. Such decision noted that the district court claimed that the involved issues were identical as reason for it's earlier denials of permission to proceed without payment of costs, fees or

security and for appointment of an attorney.

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE ISSUED

Supreme Court Rule 17 provides that a writ of certiorari may be granted:

(a)when a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter;...or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(c) When a.. federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

The instant Petition fits within the parameters of this standard.

Special Note on Issue Importance

The avoidance of issue via claiming it is identical to other issue when it is

not and the artificial narrowing of issue to one for easy disposal would permit a wholesale denial of due process and subvert the court system. Moreover it would give the appearance of a lack of impartiality in the courts at the very least.

Among the issues arbitrarily and erroneously converted to either prior tried issue or constructive discharge thus facilitating easy disposal lurk two whose importance should not be underemphasized:

i. Subordination of important matters of security to the maintenance of a racial caste system combines with the organization's laxness with regard to whites on such matters so as to threaten an overall mission crucial to the survival of the nation.

ii. The lack of objective evaluation of

suggestion, declaration of suggestion as secret and subsequent award to white management compromises a system designed to encourage effective innovation. Again such actions compromise an overall mission that can be crucial to an effective and efficient defense. The tenacious "group think" of lackeys, yesmen and symphocants substitutes rationalizing self-aggrandizement for objective analysis and encourages the substitution of prejudice for reason. The consequence of such substitution are scattered accross history from Carrhae to Kasserine. But more than the forces involved can be lost in such encounters. Therefore detection and correction of such excess is paramount and should be inflicted at every opportunity lest the discipline of objectively verifiable reasoning and a respect for the

Constitution in those controlling the vast resources of the Army too far diverge from truth and duty.

I. The Decision of the Eleventh Circuit Conflicts with That of This Court.

The Eleventh Circuit, in affirming the decision of the lower court, held: "The district court did not abuse it's discretion and did not act arbitrarily or erroneously in denying Watts' leave to proceed in forma pauperis and in denying Watt's request for appointment of counsel." This court has held that:

" This discretion is limited to a determination of the "poverty and good faith of the applicant and the meritorious character of the cause in which relief was asked"*Kinney v. Plymouth Rock Squab Co.*,236 U.S. 43.46, 35 S. Ct. 236, 238, 59 L.Ed 457 (1915)

and:

" In the absence of some evident improper motive, the applicant's good faith is established by the presentation of any issue that is not plainly frivolous"

Ellis v. United States , 356 U.S. 674, 78 S.Ct. 974, 2 L.Ed.2d 1060 (1958).

The decision uses an attack upon one of several issues , Constructive discharge" as it's only explanation for upholding the district court denial. But such attack ignores the fact that separation from normal duties occurred before any removal from employment for other claimed cause.Such separation has been held to be constructive discharge:

" To find constructive discharge the trier of fact must be satisfied that the working conditions were so difficult that a" reasonable" person in the employee's shoes would have felt compelled to resign." *Garner v. Wal-Mart Stores Inc.*807 F.2d 1536, 1539 (11th Circuit 1987) citing *Bourque v. Powell Manufacturing Co.*,617 F.2d 61,65 (5th Cir. 1980).

Resignation is not stated as required, but the creation of conditions that would force a reasonable person to resign:

A "constructive discharge" has been defined as "an onerous transfer,

having the purpose and effect of forcing the transferred employee to quit the employment" *Newspaper Guild of Boston v. Boston Herald -Traveler Corp.* 238 F.2d 471,472 (1st Cir. 1956). Such onerous and physically deleterious transfers, among other abuse, is cited in plaintiff's second complaint and the administrative complaint forming it's basis.(R-1-2). But, a public employee may not then quit:

> "Unless public employee's transfer is, in effect, a discharge, the employee has no right to simply walk out but must accept orders of his superior, even if felt to be unjust, until relieved of them by judicial or administrative action." *Alicea Rosado v. Garcia Santiago* 562 F.2d 114,118 (1977)

Such separation from normal employment has also been recognized as constructive demotion.*Tocanno v. Nimmo*, 570 F. Supp. 1197, 32 F.E.P. 1410 (d. Del 1983) and *Cf.Dowling v. Prudential Ins Co..*, 49

F.E.P 748 (S.D.N.Y. 1988).

Furthermore other extensive discrimination issue of the instant complaint was ignored to facilitate improper finding of a lack of Constructive discharge as the sole stated basis for the Appeals court decision.

II. The Decision of the Eleventh Circuit Conflicts With That of Federal Courts of Appeal.

Conflict with prior Eleventh Circuit precedent is evident where erroneous grounds (constructive discharge and ignoring other complaint issue *supra.)*is used to deny appointment of counsel.

"On petition for appointment of counsel for complainants in employment discrimination case suit, district court abused it's discretion in holding that (erroneous grounds).. allowed denial.. without first seeking lawyer willing to take the case, or proceeding on assumption of provision's (42 2000e-5) validity exercising it's discretion to determine whether complainants were entitled to appointment of

counsel.".*White v.U.S. Pipe and Foundry Co.*, 646 F.2d 203.

Conflict with other Circuit Holding is evident :

"In acting on request for appointment of attorney in cases under this subchapter , courts must remain mindful that appointment of attorney may be essential for plaintiff to fulfill the role of "a private attorney general" vindicating a policy of the highest priority" *Poindexter v. FBI* 1984, 737 F.2d 1173, 238 U.S.Federal Circuit 26

Moreover other circuits have held that even where the Commission found no reasonable cause to believe that the allegations of discrimination were true failure to appoint an attorney for such cause would be error; *Neal v. IAM Local Lodge 2386*, Fifth Circuit 1984 722 F.2d 247 ; *Jones v WFYR Radio/RKO General* C.A.Ill.1980 646 F.2d 203.,*Caston v. Sears Roebuck & Co., Hattiesburg, Miss.*, Fifth Circuit 1977,556F.2d 1305, *Harris v.Walgreen's Distribution Center*,Sixth Circuit 1972, 456F.2d 588

III The Decision of The Eleventh Circuit Involves Important Question of Federal Law Which Has Not Been But Should Be Decided By This Court.

a. *Constructive Discharge*

The issue of Constructive Discharge with regards to the necessity for an

actual resignation is an important question not currently addressed by this Court. Must employees risk loss of due process to meet this criteria? Moreover a decision on constructive demotion would enable uniformity of future decisions prior to the development of divergent and conflicting circuit decisions. Thus judicial economy would be served.

Given the increasing sophistication of employers in evading anti-discrimination law and the increasing need of employees to maintain employment in a declining economy such cases can be expected to be an increasingly significant fraction of future constructive discharge litigation. Indeed cases revealing a disregard for employee safety on the part of the employer combine with a declining job market to create a potential for

otherwise avoidable harm. The lack of settled law and guidance would be filled more efficiently by this Court's preemptive action.

b.*Rule 11 Violation Sanctions*

The degree of sanction against an agency and it's counsel that openly flaunt a contempt for fact and Federal Rule of Procedure No. 11 before the appellate court is an important question that calls for the consideration of this Court.

Appellee's appellate brief deliberately misstates the published record in a consistent and cloaked manner to support it's position.

" This circuit has indeed held that "the application of this standard (appointment of attorney under 42 U.S.C 2000e-5(f)(1) "necessarily demands the

exercise of broad discretion as the Agency claims",*Caston v.Sears,Roebuck and Co.,Hattiesburg,Miss.*,556 F.2d 1305,1308 (5th cir. 1977).However the agency's citation so isolates such phrase from the context of it's usage as to invert the meaning.

That passage continues as follows :

"Exercise of discretion, however, implies the application of a reasoned and well informed judgment. Exercise of discretion implies as well the possibility of abuse."Discretion is vested not for purposes of`limit[ing] appellate review of trial courts, or inviting[ing] inconsistency and caprice,'but rather to allow the most complete achievement of the objectives of Title VII that is attainable under the facts and circumstances of the specific

case." *Franks v. Bowman Transportation Co., Inc.*,424 U.S.747,770-771, 96 s.Ct. 1251,1267, 47 L.Ed.2d 444 (1976)(citation omitted)."We find a remand necessary in this case because we are unable to conclude from the record that the district court exercised a reasoned and well-informed discretion which we may review.*Id.*at 1308.

In citing *Caston*, again, such isolation of a phrase from supporting context to assert the meaning the agency desires is indulged. The agency citation "the determination of the EEOC [as to the merits of the discrimination claim] is highly probative" actually is a part of a qualifying phrase of a holding whose overall meaning is that refusal to appoint counsel based on EEOC's failure to find probable cause is error:

"Clearly, the refusal to appoint counsel solely because the EEOC finds no reasonable cause to believe that a claim exists would be error...citations.. The refusal to appoint counsel may in some circumstances effectively deny a plaintiff his only remedy under the law....This is not to say that the determination of the EEOC is not relevant. As the administrative agency statutoraly charged with the responsibility for enforcing Title VII and presumably equipped with at least a modest amount of expertise in the area, the determination of the EEOC is highly probative." *Id* at 1309.(emphasis added to the portion cited in isolation by the agency and thus virtually reversing the meaning of the holding). Ignored are the Agency's repeated use of misdirection, misstatement and misquotes

in the citations made to support it's argument. If the Agency behaves thus with regard to claims about published documents how much less credence is due it's less documentable claims?

c.*Constitutional Conflict*

Indeed if the position denying Watts" claims can only be thus supported. What overriding consideration necessitates such policy? Repeated actions that subordinate demonstrable fact to fiction to deny due process in a matter specifically enabled by congress and Constitutional amendment reveals a philosophy in conflict with that underlying the Constitution and this Nation's founding.

The Constitution's preamble is explicit:

", in order to form a more prefect Union, establish justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity..."

In short such purpose may be summarized; to maximize individual freedom consistent with a just, orderly and enduring Union. Inherent to such philosophy is a moral basis. An individual who has sworn to defend, uphold and protect the Constitution of the United States cannot consistently do so while acting within the frame work of another, more ancient and conflicting morality. Repeated actions reveal motivations more accurately than articulation. Thus; the repeated deceit in circumventing Constitutional guarantees and congressional intent; the Opposition's casual contempt for truth and this Court's thoroughness revealed by misstatement and misrepresentation of

Published statement as supporting a result opposite to that actually written; and the whole series of allegedly independent acts all claiming random justification yet having in common only the same negative effect coinciding with crucial court dates demonstrate a moral framework antithetical to not only the Judeo-Christian Ethic supporting the philosophy animating the Constitution but most other ethical systems that were basic to mainstream civilizations. Such moral framework is however identifiable:

" That vast era of the 'morality of mores'[1] which preceded 'world history' as the truly decisive history that determined the character of mankind: when suffering was everywhere counted as virtue, cruelty as a virtue, dissembling as a virtue , revenge as a virtue, slander of reason as a virtue, and when on the other hand well-being was counted as danger, thirst for knowledge as a danger, being pitied as disgrace, work as disgrace, madness as divine, *change* as the

very essence of immorality and pregnant with disaster." [2]

But the continued facilitation of retaliation , discrimination and the denial of due process in seeking redress is not the only destructive result of adhering to so natural a moral code. The Judeo-Christian moral framework integral to the Constitution and the existing system of laws is abandoned for what is largely it's opposite. The dedication needed in those sworn to uphold defend and protect the Constitution of the United States is thus undermined. Such "morality" combines with the vast power of the Army to threaten not only it's employees but it's mission, Nation and the Constitution.

IV. The Decision of The Eleventh Circuit Sanctions Lower court Departure From the Accepted and usual course of Judicial Proceedings as to Call For

an Exercise of This Court´s Power of Supervision.

Summary

The affirmation of the lower court denial of the request to proceed without payment of costs, fees, or security and for appointment of an attorney was done on the following basis:

i. Arbitrary limitation of multiple issues to a single issue of constructive discharge.

ii. A finding that such issue is not indicative of constructive discharge because of formal discharges more than a year and six months respectively after the subject transfer to onerous duties that was the subject ot the original constructive discharge .

iii. The uncorrected preservation of the district court's findings that:

a. The involved issues were identical to that of a later wrongful discharge

suit when such issue was different.

b. The claim that a written document from EEOC stating the contrary stated that such issues were the same as the sole later district court justification for denial of the request when it did not.

Sanctioned Lower Court Departures

Watts' application to proceed without payment of costs, fees or security and for appointment of attorney was denied . The initial order denying such application stated that the reason for such denial was "as it appears on the face of plaintiff's complaint that the issues presented and the factual background thereof have already been presented in Watts v. Marsh, No. 87-T-804-S (M.D. Ala. Jun 20, 1988." Eleventh Circuit Appeal No.88-7511.

However the judgement of such case clearly limits the issue of involved discrimination/retaliation to discriminatory/retaliatory discharge;

"The Court assumes without deciding that Watts has established a prima facie case of discrimination and retaliation because even if he has, the Secretary produced a legitimate non-discriminatory reason for discharge."R2-13 pp 6.

Clearly, retaliatory discharge and suspension are the issues addressed as the judgement cites a method of assessing both the discrimination and retaliation claims that requires that the employer:

"..[articulate] a legitimate, non-discriminatory reason which is clear and reasonably specific and worthy of credence" R2-13 pp 5.

and the specific action cited for the agency direct discharges and suspension is:

"Striking and Yelling at a superior is a serious form of misconduct, and the

court concludes that Watts was properly fired for that reason.R2 13 pp. 9.

"Watts was fired for "striking" a superior and yelling at him,.. R2-13 pp.8.

Thus the involved discharge/suspension is fixed in identity as a retaliatory and a discriminatory discharge matter by the justification claimed, in addition to an event at a particular time and in a particular location by it's description. Such direct discharge was the subject of the prior civil suit not the current one.

The prior removal that was mitigated to a suspension by the MSPB is also cited in the decision . These events too differ from those in the current case. Those issues included normal movement of disks that was suddenly and uniquely designated improper. The Court's creation of a carelessness issue where

the Agency actually made a less carefully prepared accusation of crime (theft) than their later limited witnesses, staged incident and the alleged finding (never produced) of two books in Appellant's work cubicle (accessible to anyone inside the building) even though Appellant had already paid for any and all books in dispute. None of these issues is presented in the current complaint.

Contrary to the lower court's assumption of identical issues and factual background, not only are the issues in the current complaints different, but the administrative complaints which are a legal prerequisites for the initiation of a suit were repeatedly delayed by the agency's actions even as it brought the

other actions against Appellant that lead to the original suit involving the above listed issues. Specifically the discrimination and retaliation cited in the current complaint involve; differential and detrimental treatment compared to whites with the same lack of such clearance claimed as cause; other discriminatory acts with regard to the terms ,conditions and privileges of employment as compared to whites; and constructive discharge.R1-2.

Plaintiff's claim of constructive discharge was based upon Fifth, Eleventh and other circuit precedent in regards to the meaning of "constructive discharge":

" To find constructive discharge the trier of fact must be satisfied that the working conditions were so difficult that a" reasonable" person in the employee's shoes would have felt compelled to resign." *Garner v. Wal-Mart Stores Inc.*807 F.2d 1536, 1539 (11th Circuit 1987) citing *Bourque v. Powell*

Manufacturing Co.,617 F.2d 61,65 (5th Cir. 1980).

Resignation is not required;

"Sequence of events constituted such an affront that a reasonable person would have felt compelled to resign.*Sowers v.Kemira Inc.* 701 F. Supp 809, 827, Note 1 (S.D. GA. 1988).

By such precedent a constructive discharge is existent at the point " a reasonable person would feel compelled to resign' whether they can afford to do so then or not.

Administrative processing of the involved complaint was incomplete at the June 20,1988 judgement date of the prior suit and therefore most certainly at such prior suit's initiation. R1-7.

Plaintiff's motion and response (R1-7,6) explaining such difference and requesting reconsideration of the original motion was denied by the

lower court order of Jun 22,1989. Such denial stated:

"It appears from the Plaintiff's right to sue letter that the Commission came to the same conclusions as the Court , that is , the issues presented in plaintiff's present complaint have already been adjudicated in a federal district court." R1-8.

In addition to the differences cited in the argument above such cause for denial contradicts the Commission's specific statement on such subject in the cited letter. Referring to the prior suit and then pending complaint the Commission stated in the first paragraph of it's Analysis and Findings Section:

"...the same act of alleged discrimination must be complained of in both the administrative complaint and the civil action. Such is not the case here. Appellant's administrative allegations which were rejected by the agency for processing address agency actions other than his suspension and termination,which were the issues in the civil action."R1-7 EEO ltr. pp.5 .

The commission further noted that only

a single allegation of many in the administrative complaint could conceivably be held similar to the those of the prior suit. R1-7 EEO ltr. pp.6 note 7. Such issue was not included in the present suit.

The lower court's repeated use of the terms " on the face " and "it appears" in the orders denying the application further admit that sufficient analysis and examination to make the determinations stated were lacking. In any event the conclusions reached and used as grounds for denying the application are erroneous and thus arbitrary in direct proportion to the degree and bias of the errors.The duty of the court to make a sufficient examination to accurately determine the elements necessary for an accurate decision was not fulfilled.

CONCLUSION

Based on the foregoing discussion of law and fact, it is respectfully submitted that the decisions denying the order to proceed without payment of costs, fees or security and for appointment of an attorney in accordance with 42 U.S. C. A. 2000e -5 f (1) be reversed, that the Petition for Writ of Certiorari is due to be granted and that venue be conferred on the Northern District of Georgia to avoid the appearance of a lack of impartiality evident in the Middle District of Alabama.

Berman J. Watts Jr.
Petitioner Pro Se

P.O. Box 82123
Atlanta, GA 30354

December 24,1990

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 89-7546

Non-Argument Calender

D.C. Dockett No. 89-H-444-S

BERMAN J. WATTS, JR.

Plaintiff- Appellant,

versus

JOHN O. MARSH, Jr.,
Secretary of the Army;
DEPARTMENT OF THE
ARMY, Headquarters United
States Army Aviation
Center and Ft. Rucker,

Defendants- Appellees.

Appeal from the United States District
Court for the Middle District Of
Alabama

(June 26,1990)

Before Johnson and Clark, Circuit Judges, and RONEY, Senior Circuit Judge

PER CURIAM:

The appellant, Berman J. Watts, Jr., filed a complaint in the district court, alleging employment discrimination by the Secretary of the army in violation of Title VII of the Civil Rights Act of 1964, 42 U.S. C. A. 2000e et seq. In August 1986. Watts was terminated from his position as an aerospace engineer. Watts appealed his termination to the Merit Systems Protection Board which reversed the termination decision. Instead , Watts was suspended for 60 days. Subsequently Watts was convicted in federal court for harrassment after he struck his supervisor. Because of this incident , Watts was terminated in June

1987. Watts then filed a federal employment discrimination case in the district court claiming discriminatory and retaliatory discharge. The district court ruled against Watts on these claims.

Subsequently Watts filed the instant Title VII claim. He moved to proceed in forma pauperis and for appointment of counsel. The district court denied the motions for the reason that the issues presented in his Title VII complaint had been decided in the earlier case. In support of Watts' motion to reconsider, Watts contended that the instant case alleged a constructive discharge rather than a retaliatory and discriminatory discharge. The district court denied the motion, observing in the order of denial that the E.E.O.C. had also determined

that the issues in the instant complaint had already been adjudicated. Watts filed a second motion for reconsideration which the district court denied.

Watts does not state a constructive discharge claim because he did not resign for the reason that his working conditions were so intolerable that he was forced to involuntarily resign. Watts was terminated after he was convicted in a federal court of harrassment based upon his striking his supervisor. The district court did not abuse it's discretion and did not act arbitrarily or erroneously in denying Watts leave to proceed in forma pauperis and in denying Watts' request for appointment of counsel.

WE AFFIRM

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 89-7546

Non-Argument Calender

D.C. Dockett No. 89-H-444-S

BERMAN J. WATTS, JR.

Plaintiff- Appellant,

versus

JOHN O. MARSH, Jr..,

Secretary of the Army;

DEPARTMENT OF THE

ARMY, Headquarters United

State

s Army Aviation

Center and Ft. Rucker,

Defendants- Appellees.

Appeal from the United States District

Court for the Middle District Of

Alabama

ON PETITION(S) FOR REHEARING AND

SUGGESTION(S) FOR REHEARING EN BANC

(Opinion JUNE 26 ,11th Cir.,1990,__F.2d____).

(SEPTEMBER 27, 1990)

Before : Johnson and Clark, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM:

( ) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s of rehearing En Banc are DENIED.

.....

.....

ENTERED FOR THE COURT:

/s/ Frank M. Johnson Jr.

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
SOUTHERN DIVISION

BERMAN J. WATTS, JR.)
Plaintiff)
vs.)
JOHN O. MARSH, JR.,) CIVIL ACTION NO.
in his capacity as) 89-H-444-S
Secretary of the)
Army
Defendant)

ORDER

Plaintiff's motion to proceed in forma pauperis and for appointment of counsel are DENIED, as it appears on the face of plaintiff's complaint that the issues presented and the factual background thereof already have been presented to a

court in Watts vs. Marsh.

No. 87 t-804-S (M. D. Ala. Jul 20,1988).

DONE and ORDERED this 11th day of May, 1989

/s/Truman Hobbs

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
SOUTHERN DIVISION

BERMAN J. WATTS, JR.)
Plaintiff)
vs.)
CIVIL ACTION NO.
JOHN O. MARSH, JR.,) 89-H-444-S
in his capacity as
Secretary of the)
Army
Defendant)

ORDER

Plaintiff is DIRECTED to file further information in support of his motion to reconsider, to wit:

1.Plaintiff asserts that he received his right to sue letter from the EEOC shortly before filing the present action

and that such letter is attached to the complaint. However, only a portion of the letter is so attached. Plaintiff is DIRECTED to file the full letter, and include the date the letter was received, if such date is not obvious from the letter itself.

2. Plaintiff asserts that his claim for discriminatory/retaliatory discharge, filed in a previous suit, is separate from his claim of constructive discharge. The Court informs plaintiff that :constructive discharge" means that plaintiff voluntarily resigned his position, while retaliatory discharge means that plaintiff's employer effected the discharge. Plaintiff is Directed to inform the Court as to whether the "discharge" which was decided in plaintiff's prior case is the same "discharge' plaintiff now seeks to challenge in the present action.

3. In his motion, plaintiff states that "some" of the actions currently charged occurred at different times than those in the prior case" (Emphasis added). Plaintiff is DIRECTED to state with specificity the actions which were made the subject of plaintiff's prior suit and whether any of those actions are repeated in plaintiff's present complaint.

Plaintiff is further DIRECTED to file said information within fifteen days of the date of this Order.

DONE this 30th day of May 1989.

/s/ Truman Hobbs

UNITED STATES

DISTRICT JUDGE

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
SOUTHERN DIVISION

BERMAN J. WATTS, JR.)
Plaintiff)
vs.)
CIVIL ACTION NO.
JOHN O. MARSH, JR.,) 89-H-444-S
in his capacity as
Secretary of the)
Army
Defendant)

ORDER

Plaintiff's motion for reconsideration of request is DENIED. It appears from plaintiff's right to sue letter, received March 23, 1989, that the Commission came to the same conclusions the Court, that is, the issues presented in plaintiff's present complaint have already been

adjudicated in a federal district court. 42 U.S.C. 2000e-5(f)(1) provides that "in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs or security" The Court finds that justice would not be served by granting plaintiffs motion to proceed in forma pauperis and to appoint an attorney.

DONE this 22nd day of June, 1989

/s/Truman Hobbs

UNITED STATES DISTRICT JUDGE

(STAMPED ON SIDE OF SECOND MOTION TO RECONSIDER DENIAL ORDER)

DENIED this 11th day of July, 1989

/s/ Truman Hobbs Jr.

UNITED STATES DISTRICT JUDGE